

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1601 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ. STASTE CO. MARKETING FEDERATION LTD

Versus

STATE OF GUJARAT  
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Appearance:

MR MEHUL VAKHARIA for Petitioner  
MR MA BUKHARI AGP for Respondent No. 1  
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution petitioner challenges the provisions of clause 10 of the Gujarat Rice Procurement (Levy) Order, 1983 (hereinafter referred to as 'the Order of 1983' for short) on the ground that it is arbitrary, illegal and

ultra vires to Articles 14 and 19 (1) (g) of the Constitution in so far as it excludes the petitioner society from the exemption clause.

2. The petitioner is a State level Apex Federal Cooperative Society registered under the Cooperative Societies Act having large number of cooperative societies as its members and is a representative body of lacs of farmers of Gujarat State and carries on multifarious activities so as to bring immense benefits to the farmers and also to serve consumers. Such activities include dealing in fertilizers, food grains, edible oils, edible and non-edible oilseeds, processing of various agricultural products, production and distribution of pesticides and hybrid seeds, production and distribution of pesticides, dealing in cotton, export and distribution of agricultural machinery, etc. Besides this the petitioner society also deals in the business of paddy and rice and it has about 47 rice mills either of its ownership or taken on job or lease basis. The petitioner society has also large number of storage centres throughout the State where the food-grains including rice and paddy, edible oils, oil seeds and groundnuts, etc., are being stored.

3. The Government of Gujarat in exercise of powers conferred under Section 3 of the Essential Commodities Act ('the Act' for short hereinafter) legislated the Order of 1983. Clause 10 of the Order of 1983 provides for exemption which reads thus:

"(1) The State Government may if it is necessary in the public interest to do so, by general or special order, exempt any person or class of persons or body of persons whether incorporated or not, from the operation of all or any of the provisions of this Order, for such period and subject to such conditions if any, as may be specified in such order and may at any time suspend or rescind such order.

(2) No order under sub-clause (1) shall be made by the State Government except with the prior concurrence of the Central Government.

(3) Nothing in this Order shall apply to the export of rice --

(a) by or on behalf of --

(i) the Central Government, or

- (ii) the State Government, or
- (iii) the Food Corporation of India, or
- (iv) the Gujarat State Civil Supplies Corporation Ltd.,

(b) by any person -

- (i) not exceeding five kilograms in weight in the aggregate as a bonafide traveller as part of his luggage, or
- (ii) not exceeding one hundred kilograms in weight in the aggregate for bonafide personal consumption, or
- (iii) on Government account, or
- (iv) under and in accordance with military credit notes."

4. The State Government had issued another Order being Gujarat Essential Articles (Licensing Control and Stock Declaration) Order 1981 ('the Order of 1981' for short hereinafter) and under clause 27 of the Order of 1981 exemption was granted in favour of Central Government, State Government and any other Department, institution or other organisations of the State Government or such agencies as may be approved by State Government.

5. According to the petitioner, provisions of the Order issued under the provisions of the Act are not applicable to the Central Government, State Government or any other Agencies or public institutions or Cooperative Societies as may be approved by State Government. The provisions of the Order of 1981 were not made applicable to the Gujarat State Civil Supplies Corporation Limited, Gujarat State Export Corporation and Gujarat Cooperative Oilseeds Growers Federation Limited. As per the Order of 1983 provision has been made under clause 10 referred to above granting exemption in favour of the Food Corporation of India as well as the Gujarat State Civil Supplies Corporation Limited. It is the say of the petitioner that the said provision ought to have been applied to the petitioner society also inasmuch as the petitioner society is doing similar activities as that of Food Corporation of India as well as the Gujarat State Civil Supplies Corporation Limited. Therefore, according to the petitioner, on this ground the exemption should be granted to the petitioner society. The petitioner has therefore filed this petition and prayed for the following reliefs:

"(A) Your Lordships be pleased to hold that

the provisions of Clause 10 of the Gujarat Rice Procurement (Levy) Order 1983 being arbitrary, illegal and ultra vires to Articles 14 and 19 (1) (g) of the Constitution of India in so far as it excludes the petitioner society from the exemption clause;

(B) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be issued directing the respondent not to implement the Gujarat Rice Procurement (Levy) Order, 1983 qua the petitioner;

(C) A writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction may kindly be granted directing the respondent to grant absolute exemption under clause 10 of the Gujarat Rice Procurement (Levy) Order, 1983 to the petitioner society."

6. At the time of hearing of this petition, Mr. Mehul Vakharia, learned advocate for the petitioner made a statement at the bar that the impugned provisions of clause 10 of the Order of 1983 has been repealed by subsequent notification issued by the Government of Gujarat in the year 1997 and in view of the said development now this petition has become infructuous and hence it may be disposed of by passing appropriate orders in that regard.

7. In view of the aforesaid state of affairs, the petitioner's grievance has been now redressed by virtue of the subsequent notification issued by the Government of Gujarat in the year 1997 and virtually this petition has become infructuous and hence it does not require to be prosecuted any further.

8. For the foregoing reasons, the petition fails and accordingly it is rejected. Rule is discharged with no order as to costs. Ad-interim relief granted while issuing the rule shall stand vacated.

7.7.2000. (A.M.Kapadia, J.)

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(karan)

